

USE TAX ON ART ACQUISITIONS BY INDIVIDUALS

1. Is art (paintings, sculptures, pottery, glasswork, etc.) subject to Washington's retail sales tax or use tax?

Yes. Sales of art in Washington are subject to retail sales tax. Acquisitions of art where sales tax was not paid at the time of purchase are subject to use tax when the artwork is used in Washington.

2. What is use tax?

Washington's use tax is a tax on the use of goods or certain services purchased or acquired when sales tax has not been paid. Retail purchases are subject to either the sales or use tax, but not both. The use tax functions as a compensating tax when sales tax has not been paid.

3. When is use tax due?

If Washington sales tax is not paid at the time of purchase, then use tax is owed when goods are first brought into Washington for use here. For example, use tax is due when goods are purchased or acquired:

- In a state or country that does not have a sales tax;
- In a state or country with a sales tax lower than Washington's;
- From a person that is not authorized to collect sales tax. For example, the purchase of a painting from an individual through an art magazine ad or an online auction; or
- From a seller located outside the state through the Internet, through ads in art magazines or journals, through an online auction house, or from a mail order catalog company. Many of these sellers collect Washington's sales tax, but if the company does not collect sales tax, the buyer owes use tax.

4. What is the rate for use tax?

Use tax rates are the same as the sales tax rates. Unlike sales tax, which is calculated on where the sale takes place, use tax is calculated on the place where the goods are first put to use in Washington.

5. How is use tax calculated?

Use tax is calculated on the value of the goods when they are first used in Washington. Usually, this is the purchase price of the goods. As of June 1, 2002, any freight, shipping, or delivery charges that you pay to the seller are also subject to use tax.

6. If I don't voluntarily pay the use tax owed, am I liable for penalties or interest?

Yes. Any use tax discovered by the Department is subject to delinquent penalties, assessment penalties, and interest.

7. Is there a statute of limitations or time period after which the Department can no longer assess or collect use tax?

Yes. The statute of limitations is four calendar years prior to the current year. That means that in 2005 the Department of Revenue may assess use tax that was first due on goods on or after January 1, 2001. However, there is no statute of limitations in cases of fraud or material misrepresentation.

8. Does the Department of Revenue have a use tax collection program?

Yes. The Department has a comprehensive use tax program that includes:

- Regular audits of businesses, which generated \$81 million in use tax in calendar year 2004.
- Targeted use tax education efforts for selected industries. The program generated more than \$5 million in fiscal year 2005.
- Vehicle, vessel, and aircraft use tax collections by the Departments of Licensing and Revenue generate \$135 million annually.
- Tax Discovery use tax programs for farm equipment, vehicles, vessels, aircraft, customs importation, and miscellaneous items such as artwork averages \$10 million annually.

9. If nonresidents bring property into Washington while they are visiting, do they owe use tax?

No. Items brought into Washington by visitors to the state are exempt from use tax while temporarily used here.

10. What is the estimated percent noncompliance for use tax?

Based on our audit findings, noncompliance for businesses is about 20 percent. Since individuals are not required to file regular returns and are not audited, there is not a clear estimate for individuals. We think the noncompliance rate for individuals is more than 20 percent. We calculate that more than \$500 million in use tax revenue is lost annually. The Department has no way to determine how much of this total is attributable to art.

11. What is voluntary disclosure? Is it the same as a tax amnesty program?

Voluntary disclosure is when a taxpayer comes forward to voluntarily report any unpaid tax or fee. The current penalty structure creates an incentive for people to voluntarily report because under the voluntary disclosure program penalties may be partially or fully waived. The Department's authority to enter into settlement agreements provides additional flexibility.

Though we do not refer to it as an amnesty program, the law grants the Department settlement authority and the voluntary disclosure program includes some "amnesty" features.

12. What is the Department's authority to enter into settlements for less than the full amount due?

RCW 82.32.350 authorizes the Director to enter into agreements with respect to any tax that the Department of Revenue administers. These agreements are referred to as "closing agreements" or settlements. The law states:

The Department may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the preceding chapters of this title for any taxable period or periods.

13. How does the Department plan to collect use tax on works of art?

Department will institute a comprehensive approach to collecting tax on art. The plan involves increased education and a variety of efforts to discover unpaid tax. The plan is to:

Review related art issues and policy questions to develop a standardized set of principles and positions.

Develop a targeted education program for art owners, including printed materials and Internet information. Partner with tax practitioners and industry groups to improve voluntary reporting.

Identify sources of information that document instances where Washington residents paid neither sales tax nor use tax on art purchases.

Identify and implement a systematic program of appropriate enforcement measures to assure full payment of use tax on art purchases.

14. Are there any exemptions from use tax?

Yes, the law provides numerous use tax exemptions, including those for:

- Objects of art purchased/owned by nonprofit artistic/cultural organizations;
- Household items brought into Washington by new residents;
- Personal vehicles purchased at least 90 days prior to moving to this state; and
- Items donated to nonprofit organizations.

15. If a New York resident loans a painting to a Washington art museum and ships the painting for a year-long exhibit, is use tax due?

No. An out-of-state resident is not generally subject to Washington's use tax. The Washington museum is eligible for exemption for exhibiting art and is not subject to use tax.

However, a Seattle resident who loans a painting to Washington museum is subject to use tax if that resident did not pay sales tax when the painting was purchased or acquired. The use tax becomes due when the Seattle resident first acquired the art. Loaning the painting to a museum does not affect this tax liability.

16. Because you simply look at artwork is it ever really "used"?

Although some individuals contend that artwork is never actually used because it hangs on a wall or sits in a corner, Washington law defines use broadly to include any act where a person takes or assumes dominion or control over tangible personal property.